

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel DiRocco	Team: Team # 3	CCRB Case #: 201105547	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/26/2011 6:50 AM	Location of Incident: inside of 1 Elton Avenue	Precinct: 75	18 Mo. SOL 10/26/2012	EO SOL 10/26/2012	
Date/Time CV Reported Tue, 04/26/2011 6:55 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/02/2011 3:10 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Sean Downes	03978	918975	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Scott Hovanec	24137	947087	075 PCT
2. POM Michael Kaminsky	05135	944689	075 PCT
3. POM Nicholas Muro	15537	924225	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Sean Downes	Force: Sergeant Sean Downes used physical force against § 87(2)(b)	
B.SGT Sean Downes	Force: Sergeant Sean Downes used physical force against § 87(2)(b)	

Case Summary

§ 87(2)(b) filed this complaint via telephone with the Internal Affairs Bureau (IAB) on April 26, 2011 [enclosed 3A-3B]. IAB, in turn, forwarded this case to the CCRB under IAB log number 11-18850 on May 2, 2011 [enclosed 4A-4B].

At approximately 6:50 AM on April 26, 2011, Sergeant Sean Downes, of the 75th Precinct, responded to § 87(2)(b) in Brooklyn with regards to a radio transmission for an emotionally disturbed person. The following allegations resulted:

- **Allegation A—Force: Sergeant Sean Downes used physical force against § 87(2)(b)**
§ 87(2)(g)
•
- **Allegation B—Force: Sergeant Sean Downes used physical force against § 87(2)(b)**
§ 87(2)(g)
•

While providing his sworn statement to the CCRB on May 25, 2011, § 87(2)(b) opted to mediate his complaint. However, Sergeant Downes declined to mediate and the case was returned to the undersigned on October 4, 2011 to investigate.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b). He is a native Spanish speaker and his proficiency in conversational English is slightly limited. § 87(2)(b) declined the undersigned's offer to conduct his sworn statement through a translator.

Statements to Medical Personnel

Following the incident on April 26, 2011, § 87(2)(b) reported to medical personnel that the police had hit him. He claimed that the police entered his house and hit him in the neck without reason.

While at § 87(2)(b), § 87(2)(b) informed medical personnel that the police grabbed his neck and punched him.

CCRB Testimony

§ 87(2)(b) provided a sworn statement to the CCRB on May 25, 2011 [enclosed 5A-5G], which is summarized below.

At approximately 6:50 AM on April 26, 2011, § 87(2)(b) and his sister, § 87(2)(b) were asleep inside of the bedroom that they share in the basement of § 87(2)(b) in Brooklyn. § 87(2)(b) suddenly saw § 87(2)(b) rise from her bed and walk into the hallway. § 87(2)(b) followed.

When they reached the kitchen, § 87(2)(b) saw his father, § 87(2)(b) speaking with unidentified uniformed officers outside of the premises. § 87(2)(b) was slightly intoxicated but calm. § 87(2)(b) went outside and asked the officers why they were at the house. § 87(2)(b) remained inside near the front door.

§ 87(2)(b) calmly opened the front door and, from inside of the house, asked an officer, whom he identified by name as Sergeant Downes of the 75th Precinct after having heard the sergeant say his name aloud later in the encounter, why the officers were at the house. Sergeant Downes informed § 87(2)(b) that an individual had called for the police because of a loud

radio at the location. Sergeant Downes asked § 87(2)(b) if he could check inside of the house. § 87(2)(b) verbally consented.

Sergeant Downes, accompanied by two unidentified officers, entered the house. They walked through the kitchen (located immediately past the front door) and through a small hallway to the right of the kitchen into the living room. § 87(2)(b) remained outside with § 87(2)(b) and § 87(2)(b). He soon informed an unidentified officer that he would enter the house to retrieve his jacket because it was cold outside. The officer did not respond and § 87(2)(b) proceeded into the house.

Once inside, § 87(2)(b) walked through the kitchen into the living room. There, he saw Sergeant Downes walking around with his flashlight out. The two unidentified officers were in Sergeant Downes' immediate vicinity; however, § 87(2)(b) could not specify exactly where. § 87(2)(b) did not say anything to the officers and continued to walk through the living room towards another hallway.

As § 87(2)(b) was about to pass the officers, Sergeant Downes moved in front of him and used his open right hand to forcefully make contact with § 87(2)(b)'s neck. § 87(2)(b) moved back approximately five feet in reaction and began to scream and cry: "Why did you hit me?" § 87(2)(b) ran into the house from outside and placed her body between § 87(2)(b) and Sergeant Downes. She threw her hands up in the air and angrily yelled at Sergeant Downes: "Why did you hit him?" Sergeant Downes placed both of his hands on § 87(2)(b)'s chest and pushed her out of the way. § 87(2)(b) moved very little in reaction. Sergeant Downes and the two officers left the house.

Following the above, § 87(2)(b) and § 87(2)(b) called 911 to request an ambulance because § 87(2)(b) felt neck pain. The ambulance soon arrived. As § 87(2)(b) was being placed into the ambulance, Sergeant Downes approached and provided his name and shield number to one of the paramedics. § 87(2)(b) was then transported to a hospital [the name of which he could not recall].

Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b). She did not provide the CCRB with further pedigree information.

CCRB Telephone Statement

§ 87(2)(b) provided a telephone statement to the CCRB on May 6, 2011 [enclosed 6]. This statement was generally consistent with § 87(2)(b)'s CCRB testimony. Pertinent additions and exceptions are noted below.

During the incident, § 87(2)(b) stepped in between § 87(2)(b) and Sergeant Downes. Sergeant Downes, with an open hand, slapped § 87(2)(b) in the face. Sergeant Downes then saw a knife in the kitchen and informed § 87(2)(b) that he would report that § 87(2)(b) or § 87(2)(b) § 87(2)(b) was in possession of the knife.

Attempts to Contact Civilians

The undersigned obtained a telephone statement from § 87(2)(b) on May 6, 2011. At that point, she scheduled a CCRB statement for May 11, 2011. She missed the appointment without providing any form of notification. On May 11, 2011, the undersigned mailed § 87(2)(b) a missed appointment letter which was not returned by the United States Postal Service (USPS). On May 12, 2011, the undersigned called § 87(2)(b) who rescheduled her appointment for May 18, 2011. She again failed to appear without providing notification. On May 20, 2011, the undersigned spoke, via telephone, with § 87(2)(b) who scheduled an appointment for him and § 87(2)(b) for May 25, 2011. § 87(2)(b) appeared; however, § 87(2)(b) did not.

On May 26, 2011, the undersigned mailed § 87(2)(b) a final please call letter which was not returned by the USPS.

Following this case's return from the CCRB's Mediation Unit, the undersigned attempted to contact § 87(2)(b) again. On October 17, 2011, the undersigned spoke with § 87(2)(b) via telephone. She refused to appear at the CCRB to provide a sworn statement.

§ 87(2)(b) confirmed that § 87(2)(b) § 87(2)(b) was outside and did not witness the alleged force. Sergeant Downes only placed § 87(2)(b) and § 87(2)(b) inside of the house during the altercation. As such, § 87(2)(b) § 87(2)(b) is not listed as a witness and was not contacted by the CCRB.

NYPD Statement

Subject Officer: SERGEANT SEAN DOWNES

- *Sergeant Downes is a § 87(2)(b)*
- *On April 26, 2011, Sergeant Downes, of the 75th Precinct, was dressed in uniform and acted as patrol sergeant in marked patrol car number 3148. His operator was Officer Scott Hovanec of the same command. Sergeant Downes worked between the hours of 11:05 PM and 8:02 AM.*

Memo Book Entries [enclosed 7A-7F]

At 6:25 AM, Sergeant Downes noted the response of Sector 75A to a man with a knife. At 6:26 AM, the code was changed to a 10-54 EDP [emotionally disturbed person] with a knife. At 6:45 AM, two males and one female were stopped in the rear basement courtyard of 1 Elton [Avenue in Brooklyn]. Officer Santos of the Internal Affairs Bureau was notified.

CCRB Testimony

Sergeant Downes provided a sworn statement to the CCRB on November 10, 2011 [enclosed 9A-9C], which is summarized below.

At approximately 6:25 AM on April 26, 2011, Sergeant Downes received multiple radio transmissions regarding an emotionally disturbed person in possession of a knife at § 87(2)(b) in Brooklyn. Sergeant Downes, Officer Havonec, and Sector 75A [whom Sergeant Downes identified as Officer Nicholas Muro and Officer Michael Kaminsky of the 75th Precinct] responded to the location.

Sergeant Downes and his officers entered the lobby of the main building to inquire. They soon encountered an unidentified female who pointed to the rear courtyard. The female did not provide any specifics and left without providing her name.

Sergeant Downes and his officers subsequently went through the lobby to the rear courtyard. Sergeant Downes heard loud music coming from one of the apartments in the courtyard and knocked on this apartment door. He heard voices behind the door and waited a few minutes for a response. Finally, the door opened. Standing immediately behind the door were an older Hispanic male [identified via investigation as § 87(2)(b) § 87(2)(b)] a younger Hispanic male [identified via investigation as § 87(2)(b)] and a young Hispanic female [identified via investigation as § 87(2)(b)]

Once the door opened, Sergeant Downes observed a large kitchen knife on the counter in the kitchen which was a few feet past the entrance to the apartment. He could not describe the knife further. Cognizant of the radio transmission, Sergeant Downes asked § 87(2)(b) § 87(2)(b) and § 87(2)(b) to step out of the apartment to remove them from the lungable area of the knife. Not proficient in English, all three initially refused. They eventually relented and exited the apartment standing close to the front door.

Within one minute of having stepped out, § 87(2)(b) reentered the apartment. No officer permitted him to do so. § 87(2)(b) walked into the kitchen and to the right where the living room is located. At that point, Sergeant Downes lost sight of him.

Sergeant Downes did not know why § 87(2)(b) reentered the apartment. He hypothesized that § 87(2)(b) could have gone back inside to retrieve a weapon or that someone inside could have required medical attention due to the nature of the radio transmission. As a result, Sergeant Downes and another officer [he could not recall which of the three] entered the apartment to investigate.

When Sergeant Downes first entered the apartment, he walked into the kitchen. Sergeant Downes did not see § 87(2)(b). Sergeant Downes turned right and walked into the living room. From about ten feet away, Sergeant Downes observed § 87(2)(b) running quickly towards him speaking in Spanish, which Sergeant Downes was unable to understand.

As § 87(2)(b) ran towards Sergeant Downes, Sergeant Downes placed both hands on § 87(2)(b)'s torso-area and shoved him moving § 87(2)(b) back a few feet. § 87(2)(b) began to scream. Immediately thereafter, Sergeant Downes noticed § 87(2)(b) in the living room. She too was screaming. Sergeant Downes asked § 87(2)(b) to leave the apartment. He did not make physical contact with her. Sergeant Downes then guided § 87(2)(b) out of the apartment. An ambulance was dispatched to the location.

Officers Not Interviewed

While Sergeant Downes was able to identify three officers present at the location, he could not recall which officer accompanied him into the apartment. Based on the testimonies provided to the CCRB, the investigation was able to come to a conclusive finding without identifying and interviewing this officer.

Medical Records

Ambulance Call Report

The ambulance call report [enclosed 10A-10D] notes that § 87(2)(b) claimed to have pain on the back of his neck. There was no visible edema, no bleeding, no lacerating, and § 87(2)(b) was able to move his neck up and down, and from side to side. All other physical findings appeared to be 'unremarkable.'

§ 87(2)(b) was treated at § 87(2)(b) immediately after the incident [enclosed 11A-11V]. § 87(2)(b) complained of neck pain and neck discomfort. On a pain scale, he rated his level of discomfort as a '1-2.' The pain did not radiate to any other part of his body.

NYPD Documents

SPRINT Report [enclosed 12A-12C]

At 6:28 AM, an anonymous female caller reported that her neighbor at § 87(2)(b) was intoxicated, armed with a knife, and threatening to kill anyone. She noted that the individual was in the basement apartment. At 6:29 AM, it was reported that a male, with a knife in hand, was throwing bottles and trash, and was threatening to kill himself. At 6:32 AM, a Hispanic male in possession of a knife was reported as being in the lobby of § 87(2)(b) yelling. ST1 [Sergeant Downes] and Sector 75A [Officer Nicholas Muro and Officer Michael Kaminsky] arrived at the location at 6:32 AM.

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) did not file a Notice of Claim with the City of New York within the allotted 90-day period following the incident [enclosed 15A-15B].

§ 87(2)(c), § 87(2)(b)

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) [enclosed 2A].
- § 87(2)(b) has not filed a complaint with the CCRB [enclosed 2B].

Subject Officer CCRB History

- Sergeant Sean Downes has been a member of the service for 14 years and there are four substantiated CCRB allegations against him noted below [enclosed 1A-1B]:
 - CCRB Case Number 200503450:
 - Abuse of Authority—question and/or stopped, premises entered and/or searched, search of person. The CCRB recommended charges and the NYPD found Sergeant Downes not guilty in June 2010.
 - Abuse of Authority—frisk. The CCRB recommended charges and the NYPD found Sergeant Downes guilty in June 2010. He forfeited five vacation days.

Conclusion

Identification of Subject Officer

Sergeant Downes acknowledged having interacted with § 87(2)(b) and § 87(2)(b)

Investigative Findings and Recommendations

Allegation A—Force: Sergeant Sean Downes used physical force against § 87(2)(b)

§ 87(2)(b) alleged that while walking through the living room of his home to retrieve a coat, Sergeant Downes stepped in front of him and forcefully struck him with an open-hand, making contact with his neck.

Sergeant Downes admitted to having made physical contact with § 87(2)(b) in the living room. However, Sergeant Downes testified that § 87(2)(b) was quickly running towards him while speaking in Spanish. In reaction, Sergeant Downes placed both of his hands on § 87(2)(b)'s torso and shoved him away.

According to §35.30 of the New York State Penal Law [enclosed BA], an officer is permitted to use physical force to defend himself or another from the imminent use of physical force [enclosed]. NYPD Patrol Guide Procedure 203-11[enclosed AA-AB] limits the degree of force only to the “minimum necessary.”

§ 87(2)(g)

The SPRINT report confirms that the officers responded to a report of an emotionally disturbed person in possession of a knife at § 87(2)(b) in Brooklyn. While standing outside of the apartment, Sergeant Downes observed a large knife on the kitchen counter—the location of which § 87(2)(b) confirmed during her CCRB telephone statement. § 87(2)(g)

§ 87(2)(g)

[illegible]

Allegation B—Force: Sergeant Sean Downes used physical force against § 87(2)(b)
 § 87(2)(b) alleged that when she stepped between § 87(2)(b) and Sergeant Downes, Sergeant Downes slapped her in the face. As discussed in the Attempts to Contact § 87(2)(b) section of this report, § 87(2)(b) refused to cooperate with the CCRB and provide a sworn statement. § 87(2)(g)

Team: _____

Investigator: _____

Signature _____ Print _____ Date _____

Supervisor: _____
 Title/Signature Print Date

Reviewer: _____

Title/Signature	Print	Date
-----------------	-------	------

Reviewer: _____

Title/Signature	Print	Date
-----------------	-------	------